

Ramnaresh, Vs. State of Chhattisgarh

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Court : Chhattisgarh

Decided On : Jul-24-2009

Reported in : 2009CriLJ4344

Judge : Dilip Raosaheb Deshmukh and; Rajeshwar Lal Jhanwar, JJ.

Appellant : Ramnaresh, ;vishwanath Singh, ;amar Singh and Ranjeet Kewat;state of Chhattisgarh

Respondent : State of Chhattisgarh;ramnaresh, ;vishwanath Singh, ;amar Singh and Ranjeet Kewat

Advocate for Def. : Dr. Rajesh Pandey

Judgement :

Raosaheb Deshmukh, J.

1. This judgment shall govern Criminal Appeal No. 1117/2007 preferred by the appellants/accused Ramnaresh, Vishwanath Singh, Amar Singh and Ranjeet Kewat and Criminal Reference No. 3/2007 under Section 366(1) of the Code of Criminal Procedure (henceforth 'the Code') by Shri Ram Kumar Tiwari, the Additional Sessions Judge, Pendra Road, District Bilaspur in Sessions Trial No. 403/2006.

2. The Additional Sessions Judge, Pendra Road, District Bilaspur has, vide judgment dated 20-11-2007 delivered in Sessions Trial No. 403/2006, convicted the appellants/accused Ramnaresh, Vishwanath Singh, Amar Singh and Ranjeet Kewat under Sections 449, 376(2)(g) and 302 read with Section 34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for 10 years and fine of Rs. 200/- each and in default additional rigorous imprisonment for 1 month under Section 449 of the Indian Penal Code, to imprisonment for life and fine of Rs. 200/- each and in default additional rigorous imprisonment for 1 month under Section 376(2)(g) of the Indian Penal Code. Under Section 302 read with Section 34 of the Indian Penal Code, the appellants/accused were sentenced to death.

3. Admittedly, appellant Ranjeet is the brother of Indrajeet P.W.-1 and lives next door to his house. Sugaribai P.W.-12 is the mother of the deceased Rajkumari. Dhaniram P.W.-6 is also known as Rottam.

4. Prosecution case is that on the night of 9-8- 2006, the date of Rakshabandhan, Indrajeet P.W.-1 had gone to Rajnagar to meet his father. His wife Rajkumari, the deceased was alone in the house with her two minor children aged about 7 months and 3 years respectively. Sunita P.W.-2, Anita P.W.-3 and Belabai P.W.-5 had left the house of Rajkumari around 7 P.M. after watching television with her for sometime. Servant Dhaniram P.W.-6, aged 16 years, was present at the house and continued watching television after Rajkumari slept at about 9:30 P.M. Sunita P.W.-2, Anita P.W.-3, Belabai P.W.-5 and Dhaniram P.W.-6 had seen the appellants/accused with one Kamlesh P.W.-10 at the adjacent house of appellant Ranjeet. At about 10:30 P.M., all the appellants/accused consumed liquor at the house of appellant Ranjeet. At about 12 in the night, the appellants/accused arrived at the house of Rajkumari and told Dhaniram P.W.-6 that they would ravish Rajkumari and would kill him if he told this to anyone. Appellants Ramnaresh and Amar Singh sat with Dhaniram P.W.-6. Appellants Ranjeet and Vishwanath committed rape on Rajkumari after bringing her down from the cot. Thereafter, appellants Ranjeet and Vishwanath took Dhaniram P.W.-6 to the courtyard and appellants Ramnaresh and Amar Singh entered the room of Rajkumari. After sometime, appellants Ramnaresh and Amar Singh emerged from the room and

asked Dhaniram P.W.-6 to go inside. Dhaniram P.W.-6 denied, whereupon appellants Ranjeet and Vishwanath threatened to kill him if he did not go inside the room. Dhaniram P.W.-6 entered the room and saw that Rajkumari could not speak and was breathing very heavily. Blood was coming out of her mouth and nose. On seeing this, Dhaniram P.W.-6 left the room. The appellants/accused threatened Dhaniram P.W.-6 that he would be killed if he did not keep quiet. Appellants Ranjeet and Vishwanath asked Dhaniram P.W.-6 to inform Sugaribai P.W.-12, mother of Rajkumari that Rajkumari was not awaking from sleep and left for their homes after threatening to kill him. Dhaniram P.W.-6 went and informed Sugaribai P.W.-12 at about 3 A.M. that Rajkumari was fast asleep and would not awake. Sugaribai P.W.-12 came to the house of Rajkumari and saw her lying dead with injury on the throat and private parts and blood oozing from her mouth and nostrils.

5. On receiving information, Indrajeet P.W.-1 came to Village Gullidand and saw the dead body of Rajkumari. Merg Intimation Ex.P-1 was lodged by Indrajeet P.W.-1 in P.S. Marwahi at 10:50 A.M. on 10- 8-2006. Head Constable Jagmohan Panna P.W.-14 reached the place of occurrence and noticed that dead body of Rajkumari was lying in a supine position on a black blanket. He prepared Naksha Panchayatnama Ex.P- 3 on 10-8-2006 at 4 P.M. As mentioned therein, a small white piece of saree having blood like stains and red coloured pieces of broken bangles of right hand were seen lying near the dead body. On 10-8- 2006, the piece of saree (Article A) approximately 1+ feet in length and 3 feet in width having blood like stains at 6-7 places and 7 pieces of red bangles were seized by Head Constable Jagmohan Panna P.W.-14 from the place of occurrence.

6. Post mortem on the dead body of the deceased Rajkumari was conducted by a team of doctors comprising of Dr. Sheela Saha P.W.-7 and Dr. Mahesh Singh on 10-8-2006 at 2:10 P.M (Ex.P-12). The body was cold. Rigor Mortis was present in lower limbs and absent in both upper limbs. Eyes and mouth were semi-open. Blood mixed froth had oozed from the nostril and mouth. There were two abrasions of the size 0.5'x0.5' with scratch mark by nails below the angle of right mandible just in front of the sterno cleado mastoid muscle with another scratch mark 1' in length above it. There was an abrasion on the left side of neck below

the angle of mandible to mastoid process with scratch mark as shown in the diagram. There was an abrasion in the thigh of the size of 1'x0.5' with contusion 1'x1' present on both medial aspects of thigh. On internal examination, petechial haemorrhage was present in both lungs, right side of heart was filled with blood while the left ventricle was empty. There were lacerations with abrasions 3 to 4 in number over perineum with blood mixed discharge. Uterus was ante-verted normal size. Two vaginal glass slides (Articles G1 and G2) were prepared, sealed and handed over to the Police Constable for chemical analysis. One orange saree and one green petticoat (Article F) with blood like and white stains, which were encircled and sealed, were also handed over to Police Constable No. 310 Suresh Lakda, P.S. Marwahi for chemical analysis. It was opined that death was as a result of asphyxia due to strangulation (throttling). There was evidence of rape. All injuries were ante mortem in nature. Nature of death was homicidal. Time elapsed since death was 12 to 14 hours.

7. Statement of Indrajeet P.W.-1 under Section 161 of the Code was recorded on 12-8-2006 in which he stated that his servant Dhaniram P.W.-6 had shown complete ignorance about cause of death of Rajkumari. A doubt regarding involvement in the offence of one Bhupendra whom Rajkumari had married about 3 years prior to marrying Indrajeet P.W.-1, was cast. Statement of Dhaniram P.W.-6 under Section 161 of the Code was recorded on 12-8-2006 in which he narrated for the first time regarding the commission of rape by the appellants/accused on Rajkumari. Statement of Dhaniram P.W.-6 under Section 164 of the Code was recorded by the Judicial Magistrate First Class, Bilaspur on 19-9-2006. The appellants/accused were arrested on 13-8-2006 between 3:30 and 4:10 P.M. On 13-8-2006 at 4:30 P.M., one full sleeves shirt (Article B) having blood like stains was removed from the body of appellant Ranjeet and seized vide Ex.P-7. On the same day at 4:50 P.M. one blue old nylon underwear (Article C) having blood like stains was removed from the body of appellant Vishwanath Singh and seized vide Ex.P-8. On the same day at 5:10 P.M. one old green nylon underwear (Article D) having blood like stains was removed from the body of appellant Amar Singh and seized vide Ex.P-9. On the same day at 5:15 P.M., one maroon nylon underwear (Article E) having blood like stains was removed from the body of appellant Ramnaresh and seized vide Ex.P- 10. Slides Articles H1 and H2 of appellant

Ranjeet, I1 and I2 of appellant Vishwanath Singh, J1 and J2 of appellant Amar Singh and K1 and K2 of appellant Ramnaresh were seized vide Ex.P-13 at 5:20 P.M. on 19- 8-2006 from Police Constable Brijnandan Singh P.W.- 13. Report of the medical examination of the appellants/accused was not produced in the documents under Section 173 of the Code. The doctor who examined the appellants/accused was also not cited as a witness. Seizure memo Ex.P-13 did not show that the slides were seminal slides. By memo Ex.P-21 dated 25-10-2006 of the Senior Superintendent of Police, Bilaspur the abovementioned articles were sent for chemical analysis to Forensic Science Laboratory, Raipur through Police Constable No. 310 Suresh Lakda and were received in the Forensic Science Laboratory, Raipur on 6-11-2006 vide acknowledgment Ex.P-22. After completion of investigation, challan was filed against the appellants on 6-11-2006 before the Judicial Magistrate First Class, Pendra Road, who committed it for trial to the Court of Session on 15-12-2006. The learned Additional Sessions Judge, Pendra Road framed charges under Sections 449, 376(2)(g) and 302 read with Section 34 of the Indian Penal Code against the appellants, who abjured the guilt.

8. During trial, report of the Forensic Science Laboratory, Raipur Ex.P-23 dated 31-7-2007 was produced and admitted in evidence under Section 293 of the Code by which presence of blood on Articles A, B, C, D, E, F1, F2 and presence of seminal stains and human spermatozoa on Articles C, D, E, F1, F2, G1, H1, I1, J1 and K1 was confirmed. Seminal stains and human spermatozoa was not found on Articles A and B. The seminal stains on Articles C, D, E, F1 and F2 were not sufficient for serological examination. The Slides Articles G2, H2, I2, J2 and K2 were preserved if D.N.A. Test was felt necessary. The prosecution examined as many as 16 witnesses. The appellants/accused examined Samelal D.W.-1 and Kamla D.W.-2 wife of Ranjeet to establish that the appellants/accused had slept in their respective houses between 9 to 10 P.M. on 9-8-2006.

9. Relying upon the sole testimony of Dhaniram P.W.- 6, which was duly corroborated by medical evidence of Dr. Sheela Saha P.W.-7 and Sugaribai P.W.- 12, the learned Additional Sessions Judge, Pendra Road convicted and sentenced the appellants/accused as shown in paragraph 2 supra.

10. Smt. Fouzia Mirza, learned Counsel appearing for the appellants/accused in Criminal Appeal No. 1117/2007 argued that the testimony of Dhaniram P.W.-6 was not reliable because he did not disclose the names of the appellants/accused to anyone or even to the police till 12-8-2006. Laying stress on the testimony of Indrajeet P.W.-1 in paragraph 10 which revealed that on arrival at the scene of occurrence he had noticed that shining material (Jalposh) of the bangles worn by his wife Rajkumari was present on the right side of the body of Dhaniram P.W.-6 who told him that he had collected the broken bangles in a container which he did not hand over to the police, it was argued that the possibility that Dhaniram P.W.-6, who was undoubtedly present at the scene of occurrence, had committed rape and murder of Rajkumari and had falsely implicated the appellants could not be ruled out. According to the learned Counsel for the appellants/accused, this possibility was further strengthened by the admission of Dhaniram P.W.-6 in paragraph 11 that the police had detained him at the police station for 8 days and in the lock-up for 4 days and had also beaten him. Appellant Ranjeet was not only married but was also the brother-in-law of the deceased. The fact that appellant Vishwanath was present at the time of taking the body of Rajkumari for post mortem examination and according to Sugaribai P.W.-12 on reaching the place of occurrence, appellant Ranjeet was seen carrying the minor daughter of Rajkumari in his arms and had also gone to call Rewa Lohar for Jhaadphoonk belies the prosecution case that they were responsible for rape and murder of Rajkumari. The testimony of Kamla D.W.-2, the wife of appellant Ranjeet that on the date of occurrence appellant Ranjeet had slept at 9 P.M. in the house completely ruled out the participation of appellant Ranjeet in the offence. It was also argued that the testimony of Dhaniram P.W.-6 revealed that appellants Vishwanath and Ranjeet had, after entering the room where Rajkumari was sleeping, emerged from the room after half an hour and thereafter appellants Ramnaresh and Amar Singh went inside the room and came out after half an hour. Thus, if Rajkumari was alive when Ramnaresh and Amar Singh entered the room, the charge for commission of murder of Rajkumari against appellants Vishwanath and Ranjeet could not be held to have been established. The fact that hyoid bone of Rajkumari was not fractured ruled out the possibility that Rajkumari was throttled by four able bodied young men while causing her death after ravishing her. Lastly, it was argued that the

testimony of Dhaniram P.W.-6 was neither wholly reliable nor wholly unreliable and, therefore, unless it was corroborated in material particulars by reliable testimony, direct or circumstantial, conviction and sentence awarded against the appellants by the learned Additional Sessions Judge, Pendra Road was liable to be set aside. Learned counsel further argued that the prosecution had failed to establish that the appellants were potent and capable of sexual intercourse since no material was placed on record with the documents under Section 173 of the Code to show that the appellants were subjected to medical examination as required under Section 53A of the Code. So far as the presence of semen and human spermatozoa on the slides H1, I1, J1 and K1 was concerned, no material was produced by the prosecution as to who had prepared these slides. In other words, there was no material to show that the slides H1, I1, J1 and K1 were the seminal slides of the appellants. The memo Ex.P-13 also did not reveal that the slides seized by the police were seminal slides or were seized from the person who had prepared such slides. In the absence of any material to connect the slides H1, I1, J1 and K1 to the appellants the report Ex.P-23 of the Forensic Science Laboratory, Raipur was of no avail to the prosecution against the appellants. It was further argued that Sunita P.W.-2, Anita P.W.-3, Belabai P.W.-5 and Kamlesh P.W.-10, who were alleged to have seen the appellants in the house of appellant Ranjeet on the night of 9-8-2006 did not support the prosecution story and had turned hostile. The testimony of Dhaniram P.W.-6 not being of a sterling quality could not therefore form the basis for convicting the appellants under Sections 449, 376(2)(g) and 302 read with Section 34 of the Indian Penal Code. So far as Criminal Reference No. 3/2007 by the learned Additional Sessions Judge, Pendra Road under Section 366(1) of the Code is concerned, on the above premises, Smt. Fouzia Mirza, learned counsel appearing for the appellants/accused in Criminal Appeal No. 1117/2007 argued that the appellants/accused were liable to be acquitted after giving them benefit of a reasonable doubt.

11. Shri Bhaskar Payashi, learned Panel Lawyer appearing for the State in Criminal Appeal No. 1117/2007 and Criminal Reference No. 3/2007 argued in support of the impugned judgment and contended that presence of Dhaniram P.W.-6 at the place of occurrence was established by the prosecution beyond

doubt. The non-disclosure of the occurrence by Dhaniram P.W.-6 to anyone till recording of statement under Section 161 of the Code by the police on 12-8- 2006 is explained by the fact that Dhaniram P.W.-6 was a boy of tender age of 16 years and would have been aghast and extremely frightened after witnessing the gruesome rape and murder by the appellants/accused on the wife of his master Indrajeet P.W.-1. Besides, the evidence led by the prosecution revealed that appellant Ranjeet was present through out when Indrajeet P.W.-1 returned home. Similarly, appellant Vishwanath had also accompanied the body of Rajkumari for post mortem. Thus, two of the appellants were constantly keeping a close watch on Dhaniram P.W.-6, who, therefore, could not gather enough courage to disclose the commission of offence by the appellants/accused to anyone. Besides, according to Dhaniram P.W.-6, he was under a threat by the appellants/accused that if he disclosed the incident to anyone, they would also kill him, which showed that the appellants/accused had not only intended but did commit murder of Rajkumari after committing gang rape on her. It was further argued that since Rajkumari had bled from mouth and nose, the fact that presence of blood stains was confirmed on a white piece of saree showed that the appellants had gagged Rajkumari by that cloth and, therefore, she could not shout while being ravished by the appellants/accused. It was further argued that in the examination under Section 313 of the Code and the reply to Question No. 28, the appellants, on being confronted with the testimony of Dhaniram P.W.-6, did not deny that they had gone to the house of Indrajeet P.W.-1 at night but merely showed ignorance. As regards the testimony of Indrajeet P.W.-1 in paragraph 10 referred above in paragraph 10 supra, it was argued that Dhaniram P.W.-6 and Investigating Officer R.P.Ahirwar Sub-Divisional Officer of Police P.W.-15 were not confronted with it by the defence. While deriving support from Modi's Medical Jurisprudence and Toxicology (Twenty-Third Edition, Editors Shri K. Mathiharan and Shri Amrit K. Patnaik), it was argued that asphyxial death of Rajkumari due to throttling was clearly proved in view of the finding that petechial haemorrhage of lungs was present, right chamber was filled with blood while left chamber was empty and bloody froth was emerging from nostrils and mouth. During autopsy the hands of the deceased were not clenched because Rigor Mortis had passed away in the upper limbs. It was argued that if the windpipe was not completely closed, then by

application of pressure on the throat bleeding would occur from the mouth and nostrils and death may not be instantaneous, but may be delayed and the person would be rendered insensible thereafter. So far as the confirmation of death penalty is concerned, it was argued that the gruesome rape and murder of the hapless sister-in-law on the Rakshabandhan Day by the brother-in-law in concert with three other co-accused was one of the most aggravating circumstances which would justify the extreme penalty, i.e., death sentence. It was further argued that the act of the appellants/accused was premeditated since before commission of rape they had assembled in the house of appellant Ranjeet and had consumed liquor. The manner in which a hapless young married woman with two minor children was raped and murdered by the appellants/accused in her house, the case squarely fell into the category of the rarest of rare cases and, therefore, death penalty awarded by the learned Additional Sessions Judge, Pendra Road was wholly justified and deserved confirmation by the High Court.

12. Dr. Rajesh Pandey, learned Counsel appearing for respondents No. 1 and 3/accused namely Ramnaresh and Amar Singh in Criminal Reference No. 3/2007, replying to the death reference, argued that the conduct of Dhaniram P.W.-6, the solitary witness was unnatural inasmuch as he did not disclose the names of the respondents/accused to anyone for 2 days. Learned Counsel further argued that the testimony of Sugaribai P.W.-12 did not disclose that when Dhaniram P.W.-6 informed her, he was perplexed or was in a state of shock. It was further argued that according to Dhaniram P.W.-6 the offence had occurred sometime before midnight whereafter he had informed Sugaribai P.W.-12 and the testimony of Sugaribai P.W.-12 revealed that Dhaniram P.W.-6 had informed her at 3 A.M. Thus, there is material contradiction regarding the time when Dhaniram P.W.-6 actually informed Sugaribai P.W.-12. If the respondents/accused had committed the gruesome rape and murder of Rajkumari, they would not have asked Dhaniram P.W.-6 to inform Sugaribai P.W.-12, but would have simply threatened him to keep quiet. It was also argued that the testimony of Indrajeet P.W.-1 revealed that his brother Harjeet Prasad (which according to Shri Bhaskar Payashi, learned Panel Lawyer appearing for the State is a typographical error while recording evidence and should have been Ranjeet) was also present at the house on the date of occurrence, but during investigation the whereabouts of

Harjeet Prasad were not explored. It was further argued that the delay of 2 days in recording statement of Dhaniram P.W.-6 rendered his testimony unworthy of credit. The prosecution had miserably failed to prove that the respondents/accused had been medically examined to find out traces of skin in their nails or to prove that they were potent and capable of sexual intercourse. Breach of Section 53A of the Code during investigation was thus a serious lacuna, which created a serious dent in the prosecution story. The testimony of Dhaniram P.W.-6 would reveal that the needle of suspicion for being involved in commission of the offence also revolved around him. It was, therefore, incumbent upon the investigating officer to have got the pattern of nails of Dhaniram P.W.-6 examined during investigation. Learned Counsel also submitted that conduct of respondent/accused Ranjeet in being present through out on the following day on arrival of Indrajeet P.W.-1 at the place of occurrence also ruled out his participation in the crime. The fact that the police had on 19-9-2006 got the statement under Section 164 of the Code of Dhaniram P.W.-6 recorded would go to show that the police wanted to pin him down to the statement recorded under Section 161 of the Code per force while detaining him in the lock-up. Learned Counsel argued that the possibility that Dhaniram P.W.-6, whose presence at the scene of occurrence was not in dispute, had committed rape and murder of Rajkumari could not be ruled out. It was also argued that the prosecution had failed to bring home the guilt of the respondents/accused beyond the shadow of doubt and in the facts and circumstances awarding death penalty to the respondents/accused was wholly uncalled for because the case did not fall into the category of the rarest of rare cases.

13. Shri Arun Kochar, learned Counsel appearing for respondents No. 2 and 4/accused namely Vishwanath Singh and Ranjeet Kewat in Criminal Reference No. 3/2007 adopted the arguments advanced by Dr. Rajesh Pandey, learned Counsel for respondents No. 1 and 3/accused namely Ramnaresh and Amar Singh.

14. Having considered the rival submissions, we have perused the record with utmost circumspection. There is absolutely no material on record to show that the appellants/accused Ramnaresh, Vishwanath Singh, Amar Singh and Ranjeet

Kewat had consumed liquor in the house of appellant Ranjeet prior to commission of the offence. Sunita P.W.-2, Anita P.W.-3, Belabai P.W.-5 and Kamlesh P.W.-10 turned hostile and did not support the prosecution story. Even Dhaniram P.W.-6 did not depose that the appellants/accused had consumed liquor in the house of appellant Ranjeet before commission of the offence. Sunita P.W.-2, Anita P.W.-3, Belabai P.W.-5 and Kamlesh P.W.-10 did not depose that the appellants/accused had assembled at the house of appellant Ranjeet while they were watching television with Rajkumari. Only circumstantial evidence available against the appellants/accused is the opinion given by the Forensic Science Laboratory, Raipur in the report Ex.P-23, whereby presence of blood on the shirt Article B of appellant Ranjeet, underwears Articles C, D and E of appellants Vishwanath Singh, Amar Singh and Ramnaresh respectively and the presence of seminal stains and human spermatozoa on the slides H1, I1, J1 and K1 of the appellants/accused was confirmed. However, the prosecution did not produce report of the medical examination of the appellants/accused and also did not examine the doctor who had prepared their seminal slides. The seizure memo Ex.P-13 does not, in any manner, show that the slides were seminal slides. Thus, there is no evidence as to who had prepared the slides of the appellants/accused and when. Blood group of the stains found on the shirt 'Article B' of appellant Ranjeet was not matched with the blood group of the deceased. Serological test was not performed to prove that blood found on the shirt 'Article B' was human blood. By any stretch of imagination if the seminal slides were prepared on the date when seized, i.e., on 19-8-2006, it would, in no manner, show the complicity of the appellants/accused in the commission of rape on Rajkumari on 9-8-2006.

15. The memo Ex.P-21 of the Senior Superintendent of Police, Bilaspur clearly shows that the seminal slides of the appellants/accused had been preserved after they were medically examined. It is true that the prosecution did not produce the medical examination report of the appellants/accused as contemplated by Section 53A of the Code. However, neither in their examination under Section 313 of the Code nor in their defence the appellants/accused took the plea that they were impotent or incapable of sexual intercourse. Kamla D.W.-2, wife of appellant Ranjeet also did not state anything in this regard. Had the appellants/accused taken the defence that they were impotent or incapable of sexual intercourse then

non-compliance of Section 53A of the Code could have enured to their benefit. In this view of the matter, in the absence of any specific defence that the appellants/accused were impotent or incapable of sexual intercourse, non-production of report of their medical examination and non-examination of the doctor conducting the medical examination of the appellants/accused would not be fatal to the prosecution. The argument of Shri Bhaskar Payashi, learned Panel Lawyer for the State that as the names of the appellants/accused were disclosed by Dhaniram P.W.-6 as late as 12-8-2006, the possibility that during this period due to bathing and cleaning etc. by the appellants/accused the evidence as to commission of the offence of rape would have disappeared and, therefore, non-production of the report of medical examination of the appellants/accused was not fatal to the prosecution, is well merited. Under Section 53A of the Code during investigation the medical examination of a person accused of rape would be non-productive if there are no reasonable grounds for believing that such medical examination would afford evidence as to the commission of such offence. Since the seminal stains and traces of skin in the nails, if any, would have disappeared due to bathing and cleaning for 3 days, it cannot be said that there were reasonable grounds for the investigating officer to believe that production of the report of medical examination of the appellants/accused would afford evidence as to the commission of rape. It is also pertinent to note that despite there being no material to show that the appellants/accused were medically examined, the appellants/accused did not take the plea till culmination of the trial that they were impotent or incapable of sexual intercourse. To reiterate, in the facts and circumstances of the case, non-production of the report of medical examination of the appellants/accused would not enure to the benefit of the appellants/accused since the appellants/accused did not take the plea that they were impotent or incapable of sexual intercourse.

16. The findings and opinion recorded by Dr. Sheela Saha P.W.-7 after conducting the autopsy on the body of the deceased Rajkumari have been mentioned in paragraph 6 supra which are fully established by her wholly unrebutted testimony and proves beyond doubt that gang rape was committed on Rajkumari and that thereafter she had died a homicidal death. It is pertinent to note that Dhaniram P.W.-6 was not at all confronted by the defence with his statement under Section

161 of the Code. It is well settled that the statement of a witness recorded under Section 161 of the Code can be used only for the purpose of contradicting the witness or for proving an omission therein and for no other purpose. It is thus not permissible under law to read any part of the statement of a witness recorded by the police under Section 161 of the Code unless the witness has been confronted during cross-examination with his statement to the police. The substantive evidence of a witness is his testimony before a Court of law during trial.

17. Dhaniram P.W.-6 deposed that while he was watching television at about 10-11 P.M. in the Parchhi, all the appellants/accused arrived and hurling filthy abuses told him that they would commit rape on Rajkumari and brought him from the Parchhi to the courtyard. Appellants Ramnaresh and Amar Singh held him in the courtyard while Vishwanath and Ranjeet went in the room where Rajkumari was sleeping. Vishwanath and Ranjeet emerged from the room after half an hour and thereafter Ramnaresh and Amar Singh went inside the room. It is very important to notice that Dhaniram P.W.-6 did not depose that Vishwanath and Ranjeet had held him in the courtyard while Ramnaresh and Amar Singh had entered the room where Rajkumari was sleeping. It is also very important to notice that during inquest by Head Constable Jagmohan Panna P.W.-14 he had found a white piece of saree having blood like stains by the side of the dead body of Rajkumari. There is an old saying that witnesses may lie, but circumstances do not. The autopsy report Ex.P-12 proves that blood mixed froth had oozed from the nostril and mouth of Rajkumari, abrasions and scratch mark were present around the neck and petechial haemorrhage was present in both lungs, which according to Modi's Medical Jurisprudence and Toxicology are positive indications of asphyxial death. There is no room for any doubt that the appellants/accused had used the piece of saree for gagging the mouth of Rajkumari at the time of commission of rape, which is precisely the reason why Rajkumari could not shout. Dhaniram P.W.-6 did not depose as to what appellants Vishwanath and Ranjeet did after appellants Ramnaresh and Amar Singh entered the room. He deposed that after appellants Ramnaresh and Amar Singh came out of the room all the four appellants/accused had threatened that they would also kill him if he disclosed the incident to anyone. His testimony in paragraph 3 that before visiting the house of Rajkumari all the appellants had assembled at the house of appellant Ranjeet and consumed liquor

is wholly un rebutted in cross- examination as nothing has been elicited in cross- examination to discredit this testimony. In cross- examination, the defence even did not deny the above assertion made by Dhaniram P.W.-6. Testimony of Dhaniram P.W.-6 that all the four appellants/accused had threatened that they would also kill him if he disclosed the incident to anyone has also remained un rebutted in cross-examination. Dhaniram P.W.-6 was not at all confronted with his statement under Section 161 of the Code. Dhaniram P.W.-6 deposed that before going to inform Sugaribai P.W.-12, he had seen a glimpse of the body of Rajkumari lying covered on the cot. Considering the testimony of Dhaniram P.W.-6 in its totality there does not remain any doubt that the appellants/accused had, after committing gang rape on Rajkumari throttled her to death and had only thereafter threatened Dhaniram P.W.-6 that they would also kill him if he disclosed the incident to anyone.

18. The testimony of Sugaribai P.W.-12 further proves that on reaching the house of Indrajeet P.W.-1 upon information received from Dhaniram P.W.-6, she saw that Rajkumari was lying dead on the cot. Her hair and clothes were untidy. Bangles of a hand and an ear ring were missing. The blouse was raised and her body was covered by a blanket. She also saw that impressions of fingers and thumb were present on the throat of Rajkumari. Blood had oozed from her private parts. Testimony of Dr. Sheela Saha P.W.-7 proves beyond doubt that there were two abrasions of the size 0.5'x0.5' with scratch mark by nails below the angle of right mandible just in front of the sterno cleado mastoid muscle with another scratch mark 1' in length present above it. There was an abrasion on the left side of neck below the angle of mandible to mastoid process with scratch mark as shown in the diagram drawn by her. There was an abrasion in the thigh of size of 1'x0.5' with contusion 1'x1' present on both medial aspects of thigh. There were lacerations with abrasions 3 to 4 in number over perineum with blood mixed discharge. Eyes and mouth were semi-open. Blood mixed froth had oozed from the nostril and mouth. These findings leave no room for any doubt that the appellants/accused had throttled Rajkumari after commission of gang rape on her. So far as the absence of a finding that there was fracture of the hyoid bone is concerned, according to Modi's Medical Jurisprudence and Toxicology the hyoid bone and superior cornuae of the thyroid cartilage are not, as a rule, fractured in a case of

death by throttling. All the appellants/accused shared the common intention to commit murder of Rajkumari, which is also borne out from the fact that after causing the death of Rajkumari, all the four appellants/accused had asked Dhaniram P.W.-6 that he should not disclose the incident to anyone or else they would also kill him. The exact words used by Dhaniram P.W.-6 need reproduction. He deposed in paragraph 2 that 'eSa ml le; jktdqekjh ds ?kj ds ijNh esa Vhoh ns[k jgk Fkk rks pkjksa vfHk0x.k vk;s vkSj eq>s ekWa cgu dh xkfy;ka nsrs gq, cksys fd jktdqekjh ds lkFk cykRdkj djsaxs vkSj eq>s ?kj ds vkaxu esa fudky fn;sA eSa vkaxu esa gh Fkk A mlds ckn pkjksa vkjksih eq>s cksys fd fdlh dks ?kVuk ds ckjs esa er crkuk ugha rks rq>s Hkh ekj nsaxsA' (emphasis supplied by me) It is wholly immaterial as to which of the appellants/accused actually throttled Rajkumari to death since all the four appellants/accused shared the common intention to commit murder after committing gang rape with her. Obviously, none of the appellants/accused would have wanted Rajkumari to be alive since she would have named them as the persons who had gang raped her. Thus, all the four appellants/accused had the requisite intention required under law to commit murder of Rajkumari in furtherance of which all of them or some of them throttled Rajkumari to death after committing gang rape with her. All the appellants/accused had threatened Dhaniram P.W.-6 that they would also kill him (emphasis supplied by me) if he disclosed the incident to anyone which shows that while committing murder of Rajkumari the appellants/accused were acting in furtherance of their common intention. Thus, absence of evidence as to which of the appellants/accused actually throttled Rajkumari to death does not, in any manner, either dilute the guilt of the appellants/accused under Section 302 read with Section 34 of the Indian Penal Code or justify imposition of the lesser penalty on them. Thus, the testimony of Dhaniram P.W.-6 an eye witness, medical evidence of Dr. Sheela Saha P.W.-7, the findings recorded in the memo of inquest Ex.P-3 and the testimony of Sugaribai P.W-12 leave no room for any doubt that the appellants/accused had, after committing house trespass with intent to commit gang rape and murder of Rajkumari, committed gang rape with her and committed her murder thereafter by throttling her.

19. The question which arises for our consideration now is whether the learned Additional Sessions Judge, Pendra Road was justified in convicting the

appellants/accused under Sections 449, 376(2)(g) and 302 read with Section 34 of the Indian Penal Code on the basis of the sole testimony of Dhaniram P.W.-6, a lad aged 16 years.

20. The law is well settled that the Court may convict on the basis of the testimony of a single eye witness, but the Court must be satisfied that the testimony of the solitary eye witness is of such sterling quality that it is safe to base a conviction solely on the testimony of such witness. In doing so, the Court must test the credibility of the witness by reference to the quality of his evidence. The evidence of such witness must be free from any blemish or suspicion and must impress the Court as wholly truthful and so convincing that the Court would have no hesitation in recording a conviction solely on the testimony of such witness. In *Joseph v. State of Kerala* : (2003) 1 SCC 465, the Supreme Court of India held as under:

When there is a sole witness to the incident his evidence has to be accepted with an amount of caution and after testing it on the touchstone of the evidence tendered by other witnesses or evidence as recorded. Section 134 of the Indian Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a court to record and sustain a conviction on the evidence of a solitary eyewitness. But, at the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspires implicit confidence. By this standard, when the prosecution case rests mainly on the sole testimony of an eyewitness, it should be wholly reliable.

21. We shall now undertake a very close scrutiny of the evidence of Dhaniram P.W.-6 with a view to ascertain whether it is of such sterling quality that the conviction of the appellants/accused for the offence of house trespass, gang rape and murder could safely rest on it.

22. The presence of Dhaniram P.W.-6 at the scene of occurrence is beyond doubt. He is the servant of Indrajeet P.W.-1 and also works for appellant Ranjeet as narrated by his wife Kamla D.W.-2. Kamla D.W.-2 has clearly mentioned that alias name of Dhaniram P.W.-6 is Rottam. It has been argued by all the learned counsel appearing for the appellants/respondents/accused Ramnaresh, Vishwanath Singh,

Amar Singh and Ranjeet Kewat in Criminal Appeal No. 1117/2007 and Criminal Reference No. 3/2007 that the possibility of Dhaniram P.W.-6 committing rape and murder of Rajkumari and falsely implicating the appellants/respondents/accused could not be ruled out. Thus, the presence of Dhaniram P.W.-6 at the place of occurrence at the time of offence is unquestionable.

23. Rajkumari was a married woman aged 24 years and had two children sleeping by her side. The testimony of Dhaniram P.W.-6 in paragraph 8 shows that occasionally Sugaribai P.W.-12 used to sleep at the house of Rajkumari in the absence of Indrajeet P.W.- 1, but on the date of occurrence, she did not come. He further deposed that he had gone to sleep at the house of Rajkumari because she had met him at the shop and had asked him to sleep at the house. Dhaniram P.W.-6 is a young boy of 16 years. Stretching our imagination to the farthest, we are unable to accept the argument of the defence that possibly Dhaniram P.W.-6 had committed rape and murder of Rajkumari.

24. If Dhaniram P.W.-6 alone had committed rape on Rajkumari, there would have been a struggle between them as the 24 years old Rajkumari, a mother of two children who were sleeping by her side, would not have allowed Dhaniram P.W.-6 to have an easy go with her. She would have resisted by scratching Dhaniram P.W.-6 and resisting to the maximum. Her hands and feet would have been free to resist and defend if Dhaniram P.W.-6 alone had attempted rape on her. Injuries, scratch marks would have been found on Dhaniram P.W.-6. Had Dhaniram P.W.-6 committed rape and murder of Rajkumari, he would not have gone to inform Sugaribai P.W.-12 that Rajkumari would not awake from sleep. He would have disappeared. After Sunita P.W.-2, Anita P.W.-3 and Belabai P.W.-5 left the house after watching television, he would not have waited till 11-12 P.M. if Rajkumari had already slept at 9:30 P.M. Thus, while presence of Dhaniram P.W.-6 at the time and place of occurrence is proved beyond doubt, the possibility that he might have committed rape and murder of Rajkumari is, in our considered opinion, not even the remotest by the farthest stretch of our imagination.

25. Indrajeet P.W.-1 deposed in paragraph 10 that the shining material of the bangles of his wife was noticed by him on the right side of the body of Dhaniram

P.W.-6. He further narrated that while they were cleaning the house and the room, pieces of bangles were found in a box, which Dhaniram P.W.-6 had collected in the box. However, Dhaniram P.W.-6 was not at all confronted with this evidence by the defence. It appears that Indrajeet P.W.-1 was completely misled by the skillful cross-examination by the defence as it would be impossible for any human being to identify the shining material of the bangles of his wife on the body of another. Panchnama of the dead body Ex.P-3 shows that the bangles of only the right hand and not the left hand were found broken and the bangles were lying by the side of Rajkumari on the bed. Thus, it is not a case where there was a struggle with Rajkumari all over the place where she was sleeping so as to scatter the pieces of her bangles all over. The testimony of Indrajeet P.W.-1 in paragraph 10 would clearly show that it is only after the holding of inquest and removing of the dead body, the cleaning of the room would have taken place. Being the servant, if Dhaniram P.W.-6 had found some bangles and kept them in a box, it would not, by any stretch of imagination raise any suspicion of Dhaniram P.W.-6 being the perpetrator of the crime.

26. If Dhaniram P.W.-6, a lad of 16 years, had committed the gruesome rape and murder of Rajkumari alone, he would not have been able to maintain his equilibrium so as to calmly stay at the house of Sugaribai P.W.-12 till she returned after visiting the place of occurrence and then work at the house of Indrajeet P.W.-1 the very next day when the police held the inquest.

27. The defence did not ask a single question to Dhaniram P.W.-6 in his entire cross-examination, which would indicate that he had any axe to grind against the appellants/accused or bore any grudge against them. No reason has been shown by the defence as to why Dhaniram P.W.-6 would shield the real culprit and implicate the appellants/accused, if they were innocent. Kamla D.W.-2, the wife of appellant Ranjeet also did not divulge any reason as to why Dhaniram P.W.-6 would falsely implicate her husband. She deposed that at 3-4 A.M., Rottam alias Dhaniram P.W.-6 had knocked at her door and informed her that Rajkumari was unconscious. She thereafter sent Dhaniram P.W.-6 to inform Sugaribai P.W.-12. This conduct of Dhaniram P.W.-6 also completely belies the possibility of his involvement in the rape and murder of Rajkumari.

28. The delay in recording the statement of Dhaniram P.W.-6 under Section 161 of the Code has been blown out of proportion by the defence. Dhaniram P.W.-6 is a lad of 16 years. The learned trial Judge rightly relied on the observation of the Supreme Court in *Narayan Singh and Ors. v. State of M.P.* : AIR 1985 SC 1678 that it is not uncommon for persons when they see a ghastly and dastardly murder being committed in their presence that they almost lose their sense of balance and remain dumb founded until they are able to compose themselves. This is precisely what must have happened to Dhaniram P.W.-6 when he saw the hapless wife of his master Indrajeet P.W.-1 being gang raped and murdered by his master's brother and three other able bodied appellants/accused who threatened to kill him.

29. Dhaniram P.W.-6 made no effort to flee from the place of occurrence but remained present and available through out. He kept mum when asked by Indrajeet P.W.-1 and Sugaribai P.W.-12 and the mere intimation by Indrajeet P.W.-1 also did not disclose suspicion on anyone. Nobody tried to falsely implicate anyone. Even during inquest, suspicion was not raised on anyone since the actual culprits were not known. It is only in the statement under Section 161 of the Code of Indrajeet P.W.-1 that he had pointed a mere suspicion on one Bhupendra, whom Rajkumari had married 3 years before he married her. Investigating Officer R.P.Ahirwar Sub-Divisional Officer of Police P.W.-15 has deposed in paragraph 7 that the suspicion raised by Indrajeet P.W.-1 was not found to be true during investigation. Since Dhaniram P.W.-6 was undoubtedly present at the scene of occurrence and did not divulge the names of the real culprits, he was detained at the police station and probably given some beating by the police. Placed in such a situation a person even though innocent, on being called by the police would be scared and apprehensive of the likelihood of his being implicated for the crime which he did not commit. Therefore, his statement that he feared false implication by police for the crime which he did not commit is natural. The detention of Dhaniram P.W.-6 at the police station or in the lock-up is thus natural and can, by no stretch of imagination, be taken to raise a doubt that the police suspected his involvement in the gruesome gang rape and murder of Rajkumari. If the witness, who was undoubtedly present at the scene of occurrence did not divulge the names of the culprits for 2 days, the treatment given by the police to Dhaniram P.W.-6 was not at all unnatural or uncalled for. For the foregoing reasons the mere

fact that Dhaniram P.W.-6 disclosed the involvement of the appellants/accused in the commission of gang rape and murder of Rajkumari for the first time on 12-8-2006 does not in any manner render him unworthy of credit.

30. So far as the statement of Dhaniram P.W.-6 under Section 164 of the Code recorded by the Judicial Magistrate First Class, Bilaspur on 19-9-2006 is concerned, suffice it to say that Dhaniram P.W.-6 was the sole eye witness to the gruesome gang rape and murder of Rajkumari and had named the appellants/accused for the first time on 12-8-2006 in his statement under Section 161 of the Code. Considering his age and the threat given by the appellants/accused and to rule out the possibility that he would retract from his statement under Section 161, the police must have got his statement under Section 164 recorded before a Magistrate. However, no inference can be drawn that he was compelled by the police to depose under pressure. In any case, since Dhaniram P.W.-6 did not resile from his statement under Section 161 and deposed truthfully against the appellants/accused before the trial Court, his statement under Section 164 is of no avail to the defence especially because the defence did not contradict Dhaniram P.W.-6 from his statement under Section 164. A perusal of the statement under Section 164 recorded by the Judicial Magistrate First Class, Bilaspur on 19-9-2006 also goes to show that it was not recorded in conformity with law because the Magistrate did not append beneath the statement the essential certificate that she had explained to Dhaniram P.W.-6 that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and she believed that this confession was voluntarily made, taken in her presence and hearing, and was read over to Dhaniram P.W.-6 and admitted by him to be correct and contained a full and true account of the statement made by him. In other words, the recording of statement of Dhaniram P.W.-6 under Section 164 is of no avail to the defence in this case.

31. Perusing the testimony of Dhaniram P.W.-6 with utmost circumspection, we thus find that he has withstood the test of skillful cross-examination by the defence counsel. When he was asked as to whether he went to call appellant Ranjeet when Rajkumari was struggling for life, he replied that Ranjeet was involved in the crime and, therefore, why would he go to call him. The testimony of Dhaniram

P.W.-6 proves that all the four appellants/accused after hurling filthy abuses told him that they would commit rape on Rajkumari and had drawn him out in the courtyard. It could be that the son of Rajkumari, who was lying by her side, was also given by the appellants/accused to Dhaniram P.W.-6, who admitted that he was carrying the son of Rajkumari while the daughter was crying. The counsel for the defence made the best endeavour to elicit favourable answers from Dhaniram P.W.-6 by skillful cross-examination but the learned trial Judge rightly ensured that the witness has understood the questions before answering them which is in conformity with the decision of the Supreme Court of India in *Zahira Habibulla H. Sheikh and another v. State of Gujarat and Ors.* : (2004) 4 SCC 158 in which the Court held as under:

The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials by playing an active role in the evidence-collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record.

32. The purpose of asking questions during examination under Section 313 of the Code is to afford the accused personally an opportunity of explaining any incriminating circumstance so appearing in evidence against him. The accused may or may not avail the opportunity for offering his explanation. The appellants/accused did not avail the opportunity and on being confronted with the testimony of Dhaniram P.W.-6 that they had visited the house of appellant Ranjeet at 9 P.M. by question No. 28 stood short by simply stating that they would not know. The appellants/accused did not deny that they had assembled at the house of appellant Ranjeet around 9 P.M.

33. It is also pertinent to note that after the occurrence the appellants/accused were keeping a constant watch over Dhaniram P.W.-6. Appellant Ranjeet was present near the dead body of Rajkumari till it was taken for post mortem examination and appellant Vishwanath had even accompanied the dead body of

Rajkumari for post mortem. In other words, due to the presence of his master appellant Ranjeet and co-accused Vishwanath who had threatened to kill Dhaniram P.W.-6 if he disclosed their involvement in the offence to anyone, it was natural for Dhaniram P.W.-6, a lad of 16 years, to have kept quiet for 2 days till he was questioned by the police.

34. The testimony of Dhaniram P.W.-6 is fully corroborated by medical evidence of Dr. Sheela Saha P.W.-7 and the testimony of Sugaribai P.W.-12. The confirmation of blood on the piece of saree used for gagging the mouth of Rajkumari and the confirmation of presence of semen and human spermatozoa on the vaginal slides of Rajkumari and the findings during autopsy duly proved by Dr. Sheela Saha P.W.-7 leave no room for any doubt that the appellants/accused had committed house trespass with intent to commit gang rape and murder, an offence punishable with death and had thereafter committed gang rape with Rajkumari and thereafter committed her murder by throttling her to death.

35. So far as the mention of the name of Harjeet in paragraph 1 of his testimony by Indrajeet P.W.-1 as being present in his house with servant Dhaniram P.W.- 6 at the time of occurrence, it is nothing but a typographical error. No question was put to any witness that besides appellant Ranjeet, Indrajeet P.W.-1 also had a brother named Harjeet.

36. Having thus undertaken a very close and critical scrutiny of the evidence of Dhaniram P.W.-6, we are of the considered opinion that his evidence is of such sterling quality that conviction of the appellants/accused for the commission of gang rape and murder after house trespass with that intention can safely be rested on it. We find that the evidence of Dhaniram P.W.-6 is free from any blemish or suspicion and impresses us as wholly truthful, natural and so convincing that we have no hesitation in upholding the conviction of the appellants/accused recorded by the learned Additional Sessions Judge, Pendra Road for the offences under Sections 449, 376(2)(g) and 302 read with Section 34 of the Indian Penal Code solely on the basis of the testimony of Dhaniram P.W.-6 the lone eye witness.

37. The evidence led by the appellants/accused does not prove the defence of alibi. The testimony of Samelal D.W.-1 and Kamla D.W.-2 wife of Ranjeet is

nothing but an afterthought. It is unbelievable that Samelal D.W.-1 an agriculturist was keeping a watch as to when they would go to sleep. His testimony that he would frequently go to the house of Ramnaresh to confirm that he was sleeping, is nothing but a bundle of falsehood. The testimony of Kamla D.W.-2 wife of Ranjeet that she had slept with Ranjeet at 9 P.M. on the date of occurrence is contradicted by Samelal D.W.-1 who stated in paragraph 3 that Ranjeet had gone to sleep at his house at 10 P.M. Thus, the evidence led by the defence is nothing but an afterthought and does not provide any alibi to the appellants/accused.

38. Having thus carefully scrutinised the evidence led by the prosecution and the defence in its entirety and for the foregoing reasons, we are of the considered opinion that the learned Additional Sessions Judge, Pendra Road was wholly justified in convicting the appellants/accused under Sections 449, 376(2)(g) and 302 read with Section 34 of the Indian Penal Code. The sentence awarded by the learned Additional Sessions Judge, Pendra Road for the offences under Sections 449 and 376(2)(g) of the Indian Penal Code are wholly commensurate to the offences committed by the appellants/accused and do not call for any interference. Criminal Appeal No. 1117/2007 preferred by the appellants/accused Ramnaresh, Vishwanath Singh, Amar Singh and Ranjeet Kewat is, thus, without merit and is liable to be dismissed.

39. The only question which now remains for our consideration is whether the case in hand is the rarest of rare cases and whether the learned trial Judge was justified in awarding the extreme penalty to the appellants/accused for the offence under Section 302 read with Section 34 of the Indian Penal Code.

40. It is well settled that death penalty can be awarded only in the rarest of rare cases. For the offence of murder life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime.

41. In *Machhi Singh and Ors. v. State of Punjab* : (1983) 3 SCC 470, the Supreme Court observed as under:

The following questions may be asked and answered as a test to determine the 'rarest of rare' case in which death sentence can be inflicted:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

42. In *Shivu and Anr. v. R.G.*, High Court of Karnataka and Anr. : 2007 Cri.L.J. 1806, the Supreme Court narrated the guidelines emerging from the case of *Bachan Singh v. State of Punjab* : (1980) 2 SCC 684 which have to be applied to the facts of each individual case where the question of imposition of death sentence arises. They are as under:

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

In rarest of rare cases when collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty

irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward or a cold-blooded murder for gains of a person vis--vis whom the murderer is in a dominating position or in a position of trust, or murder is committed in the course for betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis--vis whom the murderer is in a dominating position or a public figure generally loved and respected by the community.

If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest of rare cases, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.

43. In *Shivu and Anr. v. R.G.*, High Court of Karnataka and Anr. (supra), a young girl of 18 years was murdered by the appellants and to avoid detection the appellants committed the heinous and brutal act of her murder. Considering the

view expressed by the Supreme Court of India in *Bachan Singh v. State of Punjab* (supra) and *Machhi Singh and Ors. v. State of Punjab* (supra), it was held that the case fell in rarest of rare category and death sentence awarded by the trial Court and confirmed by the High Court was affirmed.

44. In *Dhananjay Chatterjee alias Dhana v. State of W.B.* : (1994) 2 SCC 220, it was held that the sordid episode of the security guard, whose sacred duty was to ensure the protection and welfare of the inhabitants of the flats in the apartment, to gratify his lust and murder a resident of one of the flats in retaliation for his transfer on her complaint, the appellant committed the most heinous type of barbaric rape and murder on a helpless and defenceless school- going girl of 18 years. The Supreme Court held as under:

16. The sordid episode of the security guard, whose sacred duty was to ensure the protection and welfare of the inhabitants of the flats in the apartment, should have subjected the deceased, a resident of one of the flats, to gratify his lust and murder her in retaliation for his transfer on her complaint, makes the crime even more heinous. Keeping in view the medical evidence and the state in which the body of the deceased was found, it is obvious that a most heinous type of barbaric rape and murder was committed on a helpless and defenceless school-going girl of 18 years. If the security guards behave in this manner who will guard the guards? The faith of the society by such a barbaric act of the guard, gets totally shaken and its cry for justice becomes loud and clear. The offence was not only inhuman and barbaric but it was a totally ruthless crime of rape followed by cold blooded murder and an affront to the human dignity of the society. The savage nature of the crime has shocked our judicial conscience. There are no extenuating or mitigating circumstances whatsoever in the case. We agree that a real and abiding concern for the dignity of human life is required to be kept in mind by the courts while considering the confirmation of the sentence of death but a cold blooded preplanned brutal murder, without any provocation, after committing rape on an innocent and defenceless young girl of 18 years, by the security guard certainly makes this case a 'rarest of the rare' cases which calls for no punishment other than the capital punishment and we accordingly confirm the sentence of death imposed upon the appellant for the offence under Section 302 IPC....

45. In *Molai and Anr. v. State of Madhya Pradesh* : AIR 2000 SC 177, the appellants had, taking advantage of the prosecutrix a girl aged 16 years being alone, committed rape on her and thereafter strangled her by using her undergarments, caused injuries on her person with a sharp edged weapon and threw her body into a septic tank at the backside of the house. The Supreme Court held that it was the rarest of rare cases where capital punishment was rightly awarded to each appellant.

46. In *Shivaji @ Dadya Shankar Alhat v. State of Maharashtra* : AIR 2009 SC 56, in a case where the appellant who was residing nearby and was known to the deceased and her family and had asked the deceased a minor girl of 9 years to accompany him to a hill on the pretext of giving her firewood and thereafter committed rape and murder, it was held by the Supreme Court of India that the case at hand fell in the rarest of rare category. The circumstances established cruel acts of the accused and called for only one sentence, i.e., death sentence. In paragraphs 25 and 26, it was observed as under:

25...It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformatory jargon.

26. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in *Sevaka Perumal etc. v. State of Tamil Nadu* : AIR 1991 SC 1463.

47. Having gone through the various decisions of the Supreme Court of India, the gruesome and ghastly gang rape and murder of the hapless Rajkumari on the Rakshabandhan Day by her brother-in-law appellant Ranjeet and three other

appellants/accused, i.e., Ramnaresh, Vishwanath Singh and Amar Singh shows the depravity and meanness of the appellants/accused, who, to satisfy their lust, did not hesitate to commit gang rape on a married woman and thereafter murdered her inside her house when her husband had gone out. The injuries found on Rajkumari, externally as well as on her private parts, narrate the ghastly act committed by the appellants/accused who were all able bodied young men. The action of the appellants/accused was premeditated and well planned. Gang rape and murder of the helpless, defenceless and innocent Rajkumari was cold-blooded, premeditated and gruesome. The manner in which four able bodied young men, i.e., the appellants/accused had, for satisfying their lust, committed gang rape on Rajkumari and throttled her to death shows that the act of the appellants/accused was so uncommon and so aggravating that sentence of imprisonment for life would be inadequate and imposition of death penalty alone would be justified for the offence of murder. It is a case of gravest and extreme culpability. It shocks the collective conscience of the community which would expect the holders of the judicial power centre to inflict death penalty in a case of murder of a hapless woman inside her house by four able bodied young men after satisfying their lust by committing gang rape on her. The commission of gang rape and murder of a hapless woman by four young and able bodied appellants/accused is an extremely brutal, grotesque, diabolical, revolting and dastardly so as to arouse intense and extreme indignation of the community. Appellant Ranjeet, being the brother-in-law of the hapless Rajkumari, was in a position of trust at least on the day of Rakshabandhan when he, Ramnaresh, Vishwanath and Amar Singh found the lonely Rajkumari an easy prey and after overpowering her gang raped her purely for satisfying their lust and brutally committed her murder by throttling her thereafter. The act of the appellants/accused was not on account of any enmity or revenge. There are no mitigating circumstances in this case which would call for imposition of a lesser penalty. Gang rape of a woman is a most brutal offence against humanity and destroys the very soul of the woman completely. If after gang rape she is murdered, nothing more is required to be done so as to make the act so brutal and diabolical so as to justify the extreme penalty since the act of gang rape by four men on a lonely woman inside her house and the commission of her murder

thereafter by throttling her surpasses all acts of brutality that one can imagine.

48. In *State of H.P. v. Shree Kant Shekari* : (2004) 8 SCC 153, it was observed by the Supreme Court of India as under:

3. Sexual violence apart from being a dehumanising act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity - it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys, as noted by this Court in *Bodhisattwa Gautam v. Subhra Chakraborty* : (1996) 1 SCC 490 the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21 of the Constitution. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitised Judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.

49. Taking an overall global view of all the circumstances, we are of the considered opinion that the circumstances of the case are such that the present case falls into the category of the rarest of rare cases and death penalty awarded to the appellants/accused under Section 302 read with Section 34 of the Indian Penal Code is wholly justified. We do hope and trust that Parliament does consider providing for the extreme penalty for the offence of gang rape, which completely destroys the soul of a woman and her right to live with dignity.

50. In the result, we dismiss Criminal Appeal No. 1117/2007 by the appellants/accused Ramnaresh, Vishwanath Singh, Amar Singh and Ranjeet Kewat and allow Criminal Reference No. 3/2007 under Section 366(1) of the Code by Shri Ram Kumar Tiwari, the Additional Sessions Judge, Pendra Road, District

Bilaspur in Sessions Trial No. 403/2006. Under Section 368(a) of the Code, we confirm the sentence of death awarded to the appellants/accused under Section 302 read with Section 34 of the Indian Penal Code by the learned Additional Sessions Judge, Pendra Road. We also confirm the sentences awarded to the appellants/accused by the learned Additional Sessions Judge, Pendra Road under Sections 449 and 376(2)(g) of the Indian Penal Code. We further order that the death sentence awarded by the learned Additional Sessions Judge, Pendra Road to the appellants/accused under Section 302 read with Section 34 of the Indian Penal Code and confirmed by us shall not be executed until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

51. The Additional Registrar (Judicial) shall, without delay, send a copy of this judgment and order under the seal of the High Court and attested with his official signature to the Additional Sessions Judge, Pendra Road, District Bilaspur under Section 371 of the Code.

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